

3.1 Notice of Intent

The OPA regulations require trustees to issue a Notice of Intent to Conduct Restoration Planning once they have made the determination to proceed with restoration planning under OPA. Although there is no NEPA requirement for issuing such a notice when agencies decide to conduct an Environmental Assessment (EA), there is the requirement that federal agencies publish, in the Federal Register, a Notice of Intent to Prepare an Environmental Impact Statement (EIS). These Notices have slightly different purposes, but the goal of notifying the public of the agencies' intent is the same.

Since the OPA regulations require trustees to publish a Notice of Intent and the NEPA regulations require a Notice of Intent for an EIS, trustees should use a format that combines the required elements of each into one notice (Notice). For most incidents under OPA, trustees should publish a Notice of Intent to Conduct Restoration Planning/Environmental Assessment (NOI/EA). Where it is clear from the outset that an EIS will be required or where an EA shows the need for an EIS, trustees will, instead, publish a Notice of Intent to Conduct Restoration Planning/ Environmental Impact Statement (NOI/EIS).

The combined Notice, whether at an EA level or EIS level, should conform to the following format and content to the extent practicable:

- Brief statement of the facts of the incident;
- Brief discussion of the Determination of Jurisdiction - trustee authority to proceed (OPA regulations § 990.41);
- Brief discussion of the Determination to Proceed with Restoration Planning (OPA Regulations § 990.42):
 - ◆ Natural resources and services that are, or are likely to be, injured as a result of the incident;
 - ◆ Potential restoration actions relevant to expected injuries; and
 - ◆ If known, potential assessment procedures for evaluating injuries and defining appropriate type and scale of restoration - *optional*.

- Information on the availability of the Administrative Record (OPA regulations § 990.45); and
- Name, address, and phone and fax numbers of contact person(s) (adding e-mail address where applicable).

The Notice may be published in the public media of local distribution or in the Federal Register (required when the Notice is for an EIS). Generally, the type of publication for the Notice should be commensurate with the nature and extent of the incident and potential effects of the restoration actions on the quality of the human environment.

3.2 Draft Planning Documents

The OPA regulations set out certain requirements for what should be considered and included in restoration plans under OPA.¹ Generally, Draft Restoration Plans (DRP) must contain sufficient information to allow meaningful public review. The NEPA regulations also require that certain items be included in Environmental Assessments (EA)² and Draft Environmental Impact Statements (DEIS).³ However, Exhibit 3.1, which lists the required elements of each of these documents, demonstrates the similarities among the three planning documents. Therefore, when developing restoration plans under OPA that also comply with NEPA, the elements discussed in this section should be included. Since, for most instances, trustees will be performing an EA at the same time the DRP is being developed, the list of elements below is tailored toward producing a DRP/EA. However, some elements required only in a DEIS are included in this list because they add to the presentation of material in an efficient and clear manner. Trustees should make every effort to ensure that a DRP/EA or DRP/DEIS is brief and can be clearly and readily understood by the public.⁴

The following list of elements should not be considered a strict template. The format of the restoration plan may need to be tailored to the nature and extent of the incident. However, regardless of the format, each element should be presented in the document to ensure compliance with both OPA and NEPA. The elements for a DRP are discussed below.

¹ OPA regulations at § 990.55(b).

² NEPA regulations at § 1508.9.

³ NEPA regulations at § 1502.10.

⁴ NEPA regulations at §§ 1502.7, 1502.8, and 1502.21.

Draft Restoration Plan - OPA Regulations at § 990.55(b)	Environmental Assessment - NEPA Regulations at § 1508.9	Draft Environmental Impact Statement - NEPA Regulations at § 1502.10
		<ul style="list-style-type: none"> • Cover sheet
<ul style="list-style-type: none"> • Summary of injury assessment procedures 		<ul style="list-style-type: none"> • Summary
	<ul style="list-style-type: none"> • Table of Contents 	<ul style="list-style-type: none"> • Table of Contents
<ul style="list-style-type: none"> • Description of nature, degree, and spatial and temporal extent of injuries 	<ul style="list-style-type: none"> • Affected environment 	<ul style="list-style-type: none"> • Affected environment
<ul style="list-style-type: none"> • Goals and objectives of restoration 	<ul style="list-style-type: none"> • Purpose of and need for restoration action 	<ul style="list-style-type: none"> • Purpose of and need for restoration action
<ul style="list-style-type: none"> • Range of restoration alternatives considered with discussion of how developed and evaluated • Identification of preferred alternative(s) 	<ul style="list-style-type: none"> • Restoration alternatives, including the preferred alternative(s) • Environmental consequences (effects) 	<ul style="list-style-type: none"> • Restoration alternatives, including the preferred alternative(s) • Environmental consequences (effects)
<ul style="list-style-type: none"> • Description of responsible party involvement in NRDA 	<ul style="list-style-type: none"> • List of agencies and persons consulted 	<ul style="list-style-type: none"> • List of preparers • List of agencies, organizations, and persons who received copies
<ul style="list-style-type: none"> • Description of monitoring for success of restoration 		<ul style="list-style-type: none"> • Appendices (if any)
		<ul style="list-style-type: none"> • Index

Exhibit 3.1 Parallel requirements for Draft Restoration Plans under the OPA regulations and Environmental Assessment and Environmental Impact Statements under the NEPA regulations.

Contents of Draft Restoration Plans (EA, DEIS)

- Cover (Fact) Sheet (*see* section 3.2.1)
- Executive Summary (*see* section 3.2.2)
- Table of Contents (*see* section 3.2.3)
- Introduction - Purpose of and Need for Restoration (*see* section 3.2.4)
- Discussion of Injury Assessment - Affected Environment (*see* section 3.2.5)
- Discussion of Restoration Alternatives, Including the Preferred Alternative(s)⁵ (*see* section 3.2.6)
- List of Preparers (*see* section 3.2.7)
- Discussion of Responsible Parties (or Other) Involvement (*see* section 3.2.8)⁶
- Index - for longer documents (*see* section 3.2.9)
- Appendices (*see* section 3.2.10)
 - ◆ Monitoring Plan
 - ◆ Other appendices as appropriate

⁵ This element may be broken up into more than one chapter, with the discussions expanded, for a DEIS.

⁶ For an EIS under NEPA regulations at § 1502.10(i), this element will include a “List of Agencies, Organizations, and Persons to Whom Copies of this Statement are Sent.”

3.2.1 Cover (Fact) Sheet⁷

The Cover Sheet represents a fact sheet on the DRP/EA or DRP/DEIS. The Cover Sheet should include specific information, including, but not limited to, the:

- Title of the restoration plan;
- Name(s) of lead or co-lead administrative trustee;
- Name(s) of co-trustees;
- Brief abstract of the restoration plan (generally only a paragraph, but no more than two paragraphs);
- Name, address, and phone and fax numbers of contact person(s), e-mail address where applicable;⁸
- Date by which comments must be received on the restoration plan; and
- Date of current restoration plan.

An example of a Cover Sheet is provided in Appendix G.

⁷ NEPA regulations at § 1502.11.

⁸ More than one person may be listed as a contact for a restoration plan. Where more than one person is listed as a contact and each person has distinct responsibilities for various aspects of the restoration plan, they and their responsibilities should be clearly defined here. For instance, one person may be overseeing NRDA issues and another person responding to NEPA compliance concerns.

3.2.2 Executive Summary⁹

The Executive Summary should adequately and accurately summarize the information contained in the DRP/EA or DRP/DEIS. In some cases, the Executive Summary is a useful summary document when distribution of the entire DRP/EA or DRP/DEIS is not necessary or impracticable. The Executive Summary parallels the structure of the restoration planning document. The Executive Summary may be organized using the same section headings as the main chapters of the restoration planning document to facilitate cross-referencing. If the Executive Summary is to be distributed separately from the restoration planning document, it should be detailed enough to stand on its own (from 5 to 15 pages). Therefore, it should include any graphics or other materials that facilitate effective communication of the information in the DRP/EA or DRP/DEIS. Otherwise, the Executive Summary should be brief (from 2 to 5 pages).

Generally, the Executive Summary will include a(n):

- Summary of the purpose of and need for restoration action (e.g., goals and objectives relative to the nature of the incident and natural resource and service injuries);
- Explanation of the decision(s) the trustees must make (FONSI or need for EIS) (e.g., selection of the preferred restoration alternative(s), FONSI, need for an EIS);
- Identification and description of the restoration alternatives considered, including the preferred alternative(s);¹⁰
- Rationale for the selection of the preferred restoration alternative(s), including a description of the expected environmental effects of implementing the restoration alternative(s)); and
- General issues or concerns raised, by the public or others.

⁹ NEPA regulations at § 1502.12.

¹⁰ The *preferred alternative(s)* is the alternative(s) the trustees propose and wish to select, that is considered beneficial to both the environment and public under OPA.

3.2.3 Table of Contents

A Table of Contents is not required for a DRP/EA, however, it is required for a DRP/DEIS. Even if not required for the DRP/EA, trustees should consider a Table of Contents for all long DRP/EA documents.

The Table of Contents should contain:

- Major elements of the body of the DRP/EA or DRP/DEIS;
- Descriptive headings taken from the body of the restoration plan; and
- A numbering system that is the same as that in the major portions of the restoration plan.

3.2.4 Introduction - Purpose of and Need for Restoration¹¹

The Introduction should lay the groundwork for restoration action. The Introduction should be brief and understandable to the general reader. Further technical details regarding restoration action will be presented in subsequent sections. The Introduction should summarize the trustees' intent and responsibility to develop a restoration plan and indicate that the development of this restoration plan represents the proposed restoration action(s) specifically profiled in the trustees' preferred restoration alternative(s). The Introduction should include the elements described below.

Summary of incident: The Introduction should provide a description of the incident that will serve to explain the need to develop a restoration plan.

This section should describe, among other things:

- The basic information on the incident, such as the date, time, and location of the incident; the physical details of the incident (e.g., collision, grounding, blowout, etc.) and whether there was a discharge and/or substantial threat of a discharge of oil; and identification of the responsible party(ies) (RP(s) involved in the incident;
- Any environmental conditions that had an effect on the incident (e.g., climatic, weather, and water conditions, or the land-water morphology, etc.) and a description of the effect these environmental conditions had on the nature and extent of the incident;
- The results of the incident, in general terms, as they affect the type of natural resources and services found in and around the affected area; and
- Response actions taken to address the incident, their general effectiveness, and the response agencies involved.

¹¹ NEPA regulations at § 1502.13.

Summary of the purpose of and need for restoration: The Introduction should explain the purpose of (goal) and need for restoration plan development.

The purpose and need statement should:

- State the goal for restoration as it relates specifically to the incident;
- Explain how the incident-specific goal relates to the general goal of restoration under OPA;¹²
- Indicate how the scope of the restoration plan fulfills the incident-specific and general goals;
- Summarize the issues associated with the restoration plan¹³ and indicate where those issues are addressed in the restoration plan; and
- Identify the trustees' roles under this restoration plan (e.g., Lead Administrative Trustee, co-trustees).

¹² OPA regulations at § 990.10 and NEPA regulations at § 1506.5.

¹³ These issues or concerns will likely include, but may not be limited to, the general evaluation criteria under the OPA regulations at § 990.54(a). Specific public issues and concerns will likely need to be categorized to evaluate efficiently and effectively the effects of the restoration alternatives on the human environment.

Public Involvement: Meaningful public involvement is required in the development of the restoration plan. Therefore, trustees must make opportunities available for the public to be involved in the restoration planning process.

The discussion on public involvement should:

- State the purpose and need to involve the public in restoration planning;
- Summarize the public involvement process.¹⁴ Trustees should indicate the form of public involvement (e.g., hearing, notice, etc.), extent of public involvement (e.g., timing and frequency), and the forum for communicating with the public (e.g., local, regional, or national newspapers, Federal Register, direct contacts to known interested persons). See Appendix F for further guidance on developing a public involvement plan for more complex incidents;
- Indicate the availability of an Administrative Record and its purpose and contents as a source of further information;¹⁵ and
- Indicate the contact person(s) to whom all public concerns and comments may be addressed concerning the restoration plan, including access to the Administrative Record.

¹⁴ OPA regulations at § 990.55(c).

¹⁵ OPA regulations at § 990.45. Guidance on establishing an Administrative Record can be found in Appendix I of the Preassessment Phase Guidance Document, cited in Appendix C of this document.

Compliance with Other Authorities: The Introduction should identify other Federal, state, local, and tribal laws, regulations, treaties, programs, plans, and policies potentially applicable to the restoration plan. The compliance requirements under these authorities may have a direct bearing on the progress and success in the development of the restoration plan.

The discussion should:

- Indicate the need to comply with any other applicable requirements;¹⁶
- Identify the potentially applicable authorities that may affect restoration action under the restoration plan (e.g., Federal/state NEPA statutes, Endangered Species Act, Coastal Zone Management Act, etc.); and
- Identify the scope of (i.e., governs protection of aquatic life, oversees construction work in wetlands, etc.), agency(ies) responsible for (e.g., Federal or state trustees, others), nature of (e.g., project-specific, coordination with other plans, review at Federal or state level, etc.), and type of and need for (e.g., permits, licenses, entitlements, etc.) compliance under the various authorities.

¹⁶ OPA regulations at §§ 990.23 and 990.24 and NEPA regulations at § 1502.25.

3.2.5 Injury Assessment - Affected Environment¹⁷

The purpose of Injury Assessment is to evaluate the nature and extent of the injuries resulting from the incident relative to baseline conditions. These baseline conditions are used to evaluate the restoration alternatives considered. The description of injury should be adequate to understand the restoration alternatives considered. Any ancillary information on injury (e.g., Preassessment Phase activities, emergency restoration actions, history of the area, anecdotal descriptions of natural resource life and service histories, etc.) may be *incorporated by reference*¹⁸ or through an attachment. The discussion of Injury Assessment - Affected Environment should include the elements described below.

Overview of the Affected Environment: As in the description of the incident (the *Background of the Incident* in section 3.2.4), it is important to complete the framework within which the incident occurred (i.e. the environmental setting of the incident).

This description should briefly:

- Provide a summary of the physical setting in which the incident occurred (e.g., regional context, areal extent, etc.), with a description of the components of the environment that are relevant to the ensuing discussion of injuries and restoration alternatives considered;
- Highlight the important natural resources and services in the affected environment (e.g., key natural resources and services, protected or specially designated habitats, endangered and threatened species, economically important services, etc.); and
- Summarize the significance of the natural resources and services highlighted and their distribution within the affected environment.

¹⁷ OPA regulations at § 990.50 and NEPA regulations at §1502.15.

¹⁸ Under the NEPA regulations at § 1502.21, trustees can *incorporate by reference* material that is relied upon in the restoration plan to reduce paperwork and avoid delays as long as this material is reasonably available to the public.

Natural Resources and Services Considered: A wide range of natural resources and services may be associated with the incident. However, not all of these injured natural resources and services will be capable of restoration. Determinations made in the Preassessment Phase and Injury Assessment component of the Restoration Planning Phase should have narrowed the list of natural resources and services to those that were injured and could be effectively restored. The natural resources and services to be restored under the restoration plan should be adequately and clearly described in this section.

The description should include:

- An overview of key Preassessment Phase factors and findings on injury, exposure, and pathway, as appropriate;¹⁹
- A summary of the approach to injury assessment, clearly outlining the objectives used to assess injury, defining the scope of injury assessment (i.e., natural resources and services considered as well as those not considered further, with reasons supporting such decisions), and identifying the injury assessment procedures used;²⁰
- Documentation of the trustees' assessment of injury. Trustees should document injuries specific to the natural resources and/or services of concern based on and consistent with the definition of injury under the OPA regulations (i.e., nature and degree of injury),²¹ as well as the key factors and findings in the injury assessment needed to scale restoration actions (i.e., spatial and temporal extent of injury);²² and
- Documentation of the trustees' assessment of the relevance of restoration to the identified injuries. Trustees should document the estimated natural recovery²³ for injured natural resources and services and any existing feasible restoration actions.

¹⁹ Refer to the Notice of Intent to Conduct Restoration Planning (OPA regulations at § 990.44).

²⁰ OPA regulations at § 990.27.

²¹ OPA regulations at § 990.51.

²² OPA regulations at § 990.52.

²³ OPA regulations at § 990.52(c). Trustees must estimate the time for recovery, naturally and/or through active restoration, in order to quantify injury. Although it is desirable to produce quantitative recovery estimates, this may not be practicable for many injuries. Therefore, where quantitative procedures are lacking, inadequate, or unnecessarily costly to precisely estimate recovery times, trustees may use appropriate qualitative procedures to develop estimates where needed.

3.2.6 Discussion of Restoration Alternatives, Including the Preferred Alternative(s)²⁴

The purpose of this section of the restoration plan is to describe the restoration alternatives considered, evaluate the restoration alternatives according to the standards under the OPA regulations,²⁵ and document the selection of the preferred restoration alternative(s). For purposes of compliance with NEPA, trustees must include an analysis of effects of each restoration alternative on the quality of the human environment. For some incidents, this may be accomplished simply by evaluating the standards under the OPA regulations.

The discussion should present the restoration alternatives being considered and clearly define the differences between the restoration alternatives (i.e., in a comparative form) to provide a clear basis for choice among the restoration alternatives. For a DRP/DEIS, detailed discussions of environmental effects are generally addressed as a separate chapter.

This section should explain how the restoration alternatives considered under this restoration plan are structured. The discussion may be organized by:

- Restoration alternatives (i.e., each restoration alternative may be designed to address multiple natural resource and/or service injuries); or
- Natural resources and services (i.e., multiple restoration alternatives may be designed to address individual natural resources or services).

²⁴ *Alternatives Including the Proposed Action* under the NEPA regulations at § 1502.14. Trustees should consider the modified title above to avoid confusion between OPA and NEPA.

²⁵ OPA regulations at § 990.54(a).

The discussion of restoration alternatives should include the elements described below.

Reasonable Range of Restoration Alternatives: If the information on injury developed during the Injury Assessment component of the Restoration Planning Phase is sufficient to justify restoration, trustees must evaluate a *reasonable range* of restoration alternatives. These restoration alternatives must be designed so that, as a package of one or more actions, the restoration alternative would make the environment and public whole. However, only restoration alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered.²⁶ Trustees should identify briefly the standards or criteria used to select the restoration alternatives being considered (e.g., information on injury, relevance to restoration, etc.)²⁷ and indicate how the restoration alternatives developed represent a *reasonable range* of restoration alternatives. The identification of restoration alternatives considered, as well as those considered but eliminated from further consideration, will attest to the fact that a reasonable range of alternatives was evaluated relative to the incident.

Description of Restoration Alternatives Considered: Trustees must identify each of the restoration alternatives considered in the restoration plan. Under the OPA regulations, each restoration alternative includes primary and/or compensatory restoration actions. Natural recovery is considered under the primary restoration action and must be one of the alternatives considered.²⁸

²⁶ OPA regulations at § 990.53(a).

²⁷ OPA regulations at § 990.53.

²⁸ OPA regulations at § 990.53(b)(2).

This section should:

- Define the restoration alternative considered and its component restoration actions (primary and/or compensatory)²⁹ relative to the natural resources and/or services or injuries of concern;³⁰
- If the restoration alternative is taken from a Regional Restoration Plan or existing restoration project, cite the specific section of the regional plan or existing project³¹ and describe the adequacy and relationship of the restoration alternative in the regional plan or existing project to the incident of concern;³²
- Define the objective(s)³³ of this restoration alternative relative to the incident-specific goal (as stated in the Purpose of and Need for Restoration section);
- Summarize the management requirements (e.g., administrative, logistical, technical, etc.) necessary to implement this restoration alternative. This summary would include the need to conduct pilot studies to define the potential success of the restoration alternative.³⁴ Trustees may include this information in an appendix and simply make reference to the appendix (e.g., within the monitoring plan); and
- Identify the restoration alternatives considered, but not analyzed in detail. As with natural resource and service injuries, it is important to document the restoration alternatives that do not merit additional consideration in the planning process. This listing demonstrates that trustees have not overlooked other restoration opportunities. This section should also briefly provide the reason(s) for not considering those restoration alternatives (e.g., addressed through other mitigation actions, jurisdictional issues, etc.).

²⁹ OPA regulations at § 990.53.

³⁰ The title of each restoration alternative and its components should be descriptive.

³¹ OPA regulations at § 990.56(a).

³² OPA regulations at § 990.56(b)(1). If trustees intend to use a restoration alternative from a Regional Restoration Plan or existing restoration project, they will need to issue a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project (see OPA regulations at § 990.56(b)(3)).

³³ Objectives refer to the means by which the goal will be achieved.

³⁴ OPA regulations at § 990.54(c).

Comparison and Evaluation of the Restoration Alternatives: In this section, trustees should summarize the environmental effects of the restoration alternatives on the human environment. For a DRP/DEIS, more detailed discussions on environmental effects should be addressed in a separate chapter (those points that would be separated out will be noted in the following discussion). For a DRP/EA, this section contains the comparison and evaluation of the restoration alternatives.

This section is key to distinguishing between the restoration alternatives, therefore, it should be readable and accessible. To minimize extensive narrative descriptions, trustees are encouraged to provide this information in the form of a comparative matrix.

The comparative matrix and associated discussion should:

- Indicate the restoration alternatives considered in the comparison of effects;
- Indicate the standards/criteria used to evaluate the restoration alternatives being considered;³⁵ and
- Highlight the key factors and findings distinguishing the various restoration alternatives relative to the evaluation criteria/standards.

In developing the comparative matrix, trustees should make the information as quantifiable as practicable (e.g., habitat acres affected, number of biological natural resources affected, etc.), using narrative phrases to qualify numeric estimates (as needed), using qualifiers (e.g., negligible, low, moderate, high, etc.) if numeric quantification is not possible, and defining qualifiers used.

³⁵ OPA regulations at § 990.54(a). Also refer to the *Restoration Evaluation Process* discussion in section 3.2.7.

Trustees must evaluate the restoration alternatives developed and considered based upon certain factors. At a minimum, trustees must base this evaluation on the standards provided under the OPA regulations,³⁶ which include the:

- Cost to carry out the restoration alternatives;
- Extent to which each restoration alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;
- Likelihood of success of each restoration alternative;
- Extent to which each restoration alternative will prevent future injury as a result of the incident and avoid collateral injury as a result of implementing the alternatives;
- Extent to which each restoration alternative benefits more than one natural resource and/or service; and
- Effect of each restoration alternative on public health and safety.

The effects provided by following the OPA regulations are quite comprehensive and would cover the usual NEPA categories of direct, indirect, and cumulative effects. However, where trustees determine that additional factors (i.e., effects) need to be considered under other applicable authorities (e.g., effects on endangered species and their habitat), they may include such factors.

In order to address the NEPA *effects analysis*, the evaluation of restoration alternatives should describe the full range of potential effects considered³⁷ specific to the natural resource and/or service of concern and document the key projections of the effects on the human environment (i.e., nature, degree, and spatial and temporal extent of potential effects).³⁸ To facilitate a clear understanding of the potential effects and restoration scaling, trustees should compare the information on potential effects with baseline conditions.

³⁶ OPA regulations at § 990.54(a).

³⁷ The effects of the alternative and associated actions on all natural resources and services must be addressed (e.g., direct, indirect, short term, long term, beneficial, adverse, irreversible and irretrievable, cumulative, etc.).

³⁸ OPA regulations at §§ 990.51(c) and 990.52(b).

For a DRP/DEIS, trustees should consider including this discussion in a separate chapter and possibly augmenting the restoration plan by:

- Clearly define the evaluation standards/criteria in the context of the incident;
- Describe the rationale for including the various evaluation standards/criteria relative to the restoration planning process;
- Define the assumptions and constraints for each evaluation standard/criterion; and
- Describe how the evaluation standards/criteria will be applied relative to the restoration alternatives (e.g., approach, objectives, procedures, etc.).

Selection of the Preferred Restoration Alternative(s): Trustees must indicate their preferred restoration alternative(s) based upon the comparison and evaluation described above. Where two or more restoration alternatives are equally preferable, trustees must select the most cost-effective alternative.³⁹

This section should:

- Indicate the trustees' preferred restoration alternative(s);
- Explain the factors considered in choosing the preferred restoration alternative(s);
- Describe the overall implications relative to the preferred restoration alternative(s) (e.g., environmental, economic, social, etc.); and
- Describe the general requirements necessary to implement the preferred restoration alternative(s).

For a DRP/DEIS, this discussion should be expanded to reflect the broader scope of issues and considerations.

³⁹ OPA regulations at § 990.54(b).

3.2.7 List of Preparers⁴⁰

Trustees should list the persons (with title and agency name) preparing the restoration plan. For a DRP/EA, information on the background or qualifications of preparers may be contained in the Administrative Record or in an Appendix. For a longer document, such as a DRP/DEIS, this section may also:

- Identify the chapters or sections of the restoration plan developed by specific persons or agencies;
- Distinguish between core team contributors and specialists who supplied backup studies or data; and
- Provide information on background and/or qualifications of the preparers.

3.2.8 Discussion of Responsible Party (or other) Involvement⁴¹

The OPA regulations require that the restoration plan describe past and proposed involvement of the responsible parties in the NRDA.⁴² In addition, for a DRP/EA, trustees must list agencies and persons consulted in the development of the restoration plan. For a DRP/DEIS, if trustees actively circulate the restoration plan, supplements to the restoration plan, or the summary of the restoration plan, the trustees must also maintain a list of persons who were provided a copy of the restoration plan. This list of persons who were consulted or who received a copy of the restoration plan may be included in the Administrative Record, with reference to the list in the restoration plan.

3.2.9 Index

An Index is not required for a DRP/EA. However, an Index is recommended for longer DRP/EA documents and is required for a DRP/DEIS.⁴³ The Index, if included, should be detailed and incorporate references to natural resources and services, sites, or other topics in the restoration plan.

⁴⁰ NEPA regulations at § 1502.17.

⁴¹ NEPA regulations at § 1502.10(i) requires a *List of Agencies and Persons Consulted* for an EA and *List of Agencies, Organizations, and Persons to Whom Copies of this Statement are Sent* for an EIS.

⁴² OPA regulations at § 990.55(b)(1)(vi).

⁴³ NEPA regulations at § 1502.10(j).

3.2.10 Appendices⁴⁴

Appendices should be limited to material that is essential to reviewing the restoration plan. For example, Appendices should not contain information that is pulled from the Administrative Record files. Instead, Appendices should include such items as study reports, data, or other plans prepared specifically for and relied upon in the restoration plan. Some of these appendices are suggested for a restoration plan under the OPA regulations.

Monitoring Plan: A description of a monitoring program for determining success of restoration is a suggested component of a restoration plan under the OPA regulations.⁴⁵ For an EIS under NEPA, a monitoring program is a required component of the Record of Decision, which is developed after the trustees make a final decision on restoration actions described in the DRP/DEIS.⁴⁶

A monitoring plan should provide the general requirements necessary for ensuring restoration compliance and success and should:

- Determine and describe the restoration actions considered appropriate for measuring the progress, performance, and success of the restoration plan;
- Identify who will be responsible for the restoration actions (i.e., implementation and oversight) and the costs associated with these restoration actions; and
- Indicate any provisions for corrective actions relative to restoration success.

Bibliography - Optional: Neither the OPA nor NEPA regulations require a Bibliography in restoration plans. However, all factual information in the plan must be appropriately referenced.⁴⁷ In a longer or more complex restoration plan, these references should appear in an alphabetical list in a Bibliography.

⁴⁴ NEPA regulations at § 1502.18.

⁴⁵ OPA regulations at § 990.55(b).

⁴⁶ NEPA regulations at § 1505.2.

⁴⁷ NEPA regulations at § 1502.24.

Where trustees refer to specific facts that stem from another source within the restoration plan, trustees should cite that source and document the source in the Bibliography. Trustees are encouraged to rely on primary, peer-reviewed sources, rather than secondary sources.

The Bibliography should:

- Include a list of all technical references and background studies used by the trustees in preparing the restoration plan. Each reference must be as complete as possible (e.g., author(s), date of publication, full title, publisher, etc.). When an agency is required to prepare a document, that agency should be listed as the author, rather than an outside entity such as a contractor;
- Ensure that all references listed in the Bibliography are generally available to the public or, if not generally available, are at least included in the Administrative Record; and
- Ensure consistency between the references in the Bibliography and parenthetical citations in the text of the restoration plan.

Either as part of the Bibliography or some other part of the restoration plan, trustees should list those documents or components of documents that are *incorporated by reference*⁴⁸ in the restoration plan.

Glossary and Acronyms: A glossary of terms is not a required element of a DRP/EA or DRP/DEIS. However, where there are critical terms and concepts that need to be understood by reviewers, trustees should consider including a Glossary as an appendix to the restoration plan. For the same reason, a List of Acronyms might be useful. Trustees should include terms or concepts that are unfamiliar to the general public and should consider including appropriate definitions of terms from the OPA and NEPA regulations as part of the glossary.

Maps, Photographs: Maps and other visual aids such as photographs are not required elements of a restoration plan, but might provide appropriate orientation, perspective, and understanding of the incident and proposed restoration alternatives. Maps and other visual aids should be appropriately detailed and specific to the incident and restoration plan.

⁴⁸

Refer to footnote 18.

3.3 Notice of Availability

Where trustees decide to issue a Notice of Availability (NOA), rather than publishing the DRP/EA or DRP/EIS,⁴⁹ the NOA should include, at a minimum:

- A statement indicating the public availability of the DRP/EA or DRP/DEIS;
- A summary of the DRP/EA or DRP/DEIS, with a brief description of the restoration project;
- The date by which comments are to be received on the DRP/EA or DRP/DEIS; and
- The contact person(s) to whom comments should be addressed, as identified on the Cover Sheet of the restoration plan.

3.4 Final Restoration Plan/Environmental Assessment/Environmental Impact Statement

After trustees receive and analyze comments on a DRP/EA or DRP/DEIS, several actions are possible in response to those comments. Exhibit 3.2 details the requirements under the OPA and NEPA regulations concerning these actions. The OPA regulations provide that trustees must adequately consider all public comments on the Draft Restoration Plan.⁵⁰ Where an analysis determines that there will be no significant effect on the human environment, the Final Restoration Plan/Environmental Assessment (FRP/EA) will respond to public comments, if applicable, and explain the Finding of No Significant Impact (FONSI) on the human environment. Therefore, to combine the requirements of both OPA and NEPA, a FRP/EA will contain:

- Information from the DRP/EA on injuries and restoration alternatives;
- Statement of the trustee agency's decision on the preferred restoration alternative(s);
- Response to public comments, if applicable;

⁴⁹ See discussion in Chapter 2, section 2.2.

⁵⁰ This standard applies under OPA § 1006(c)(5) for all restoration plans and is required by the OPA regulations at § 990.23(c). Under the NEPA regulations at §§ 1501.4(e), 1503.1(a)(3), and 1506.6, Federal agencies must address all substantive comments for EISs, but not for EAs.

- Indication of any changes made to the DRP/EA;
- Brief explanation of why a restoration action will not have a significant effect on the human environment; and
- Notation of any other environmental documents related to the restoration plan that are being or have been prepared.

For DRP/DEISs, the same basic elements are required, but may have additional requirements (*see* Exhibit 3.3). Therefore, a final restoration plan (FRP/EIS) should contain:

- Information from the DRP/DEIS;
- Statement of the trustee agency's decision on the preferred restoration alternative(s);
- Explanation of the trustee agency's response to comments, including a statement of any reasonable opposing view which was not adequately discussed in the DEIS;
- Explanation of any modification of restoration alternatives, including the preferred restoration alternative(s);
- Statement of supplement, improvement, or modification of the trustee agency's analysis;⁵¹
- Indication of any minor changes made to the DRP/DEIS;⁵² and
- Attachment consisting of substantive comments received (or summary thereof).

⁵¹ *See* NEPA regulations at § 1502.9 for supplemental EIS.

⁵² *See* NEPA regulations at § 1503.4(a).

Exhibit 3.2 Requirements under the OPA and NEPA regulations concerning public actions.

OPA Regulations Final Restoration Plan (§ 990.55(d))	NEPA Regulations Final Environmental Assessment (§ 1501.4(e))	NEPA Regulations Final Environmental Impact Statement § 1502.9
<ul style="list-style-type: none"> ● Information in Draft Restoration Plan ● Response to comments, if applicable ● Indication of any changes made to Draft Restoration Plan 	<ul style="list-style-type: none"> ● Finding of No Significant Impact ● Brief explanation why an action will not have a significant effect on the human environment ● Include Environmental Assessment or summary of it ● Statement of any other environmental documents related to it that are being or have been proposed 	<ul style="list-style-type: none"> ● Response to comments ● Statement of any reasonable opposing view which was not adequately discussed in draft statement and agency's response to the issues raised <p>§ 990.1503.4(a) - Possible Responses:</p> <ul style="list-style-type: none"> ● Modification of alternatives, including the proposed action ● Development and evaluation of alternatives not previously given serious consideration by the agency ● Supplementing, improving, or modifying agency's analysis ● Factual corrections ● Explanation of why comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response <p>§ 1503.4(b):</p> <ul style="list-style-type: none"> ● All substantive comments received on DEIS (or summaries of those comments) should be attached whether or not the comment is thought to merit individual discussion by the agency in the text of the statement <p>§ 1503.4(c):</p> <ul style="list-style-type: none"> ● If changes in response to comments are minor and confined to factual corrections or statements of why the comments do not warrant further agency response, agencies may write them on errata sheets and attach them to the statement instead of rewriting the DEIS ● If changes require preparation of a supplemental EIS, see § 1502.9(c)

3.5 Demand/Record of Decision

Once trustees have prepared the Final Restoration Plan, they must present a demand to the RP(s), which requests implementation or funding of the Final Restoration Plan.⁵³ If the Restoration Plan is also an EIS, the agency must also prepare a Record of Decision (ROD), which summarizes and documents the agency's decisionmaking process.⁵⁴ Exhibit 3.3 lists the requirements for contents of the demand under the OPA regulations and the ROD for EIS under the NEPA regulations. Trustees should be aware that a ROD is **not** required for an EA.

3.6 Notification of Availability of Final Documents, ROD

Although the OPA regulations state that the Final Restoration Plan and Demand should be publicly available, there are no requirements specified in the rule as to how these documents will be made publicly available. However, the NEPA regulations require that all EISs (Draft and Final) must be filed with the Environmental Protection Agency (EPA) and that EPA shall publish a Notice in the Federal Register each week of EISs filed during the preceding week.⁵⁵ Should trustees decide to provide a Notice of Availability (NOA) for a FRP/FONSI or FRP/EIS in addition to the Notice published by EPA, the trustees' NOA should be consistent with the NOA for a DRP/EA and DRP/DEIS, described in Section 3.3 of this chapter, with slight modifications. Therefore, when trustees decide to issue a NOA for final documents, the NOA should include:

- A statement indicating the public availability of the FRP/FONSI or FRP/FEIS;
- A summary of the FRP/FONSI or FRP/FEIS, with a brief description of the project; and
- The contact person(s) for distribution of or questions on that FRP/FONSI or FRP/EIS.

⁵³ OPA regulations at § 990.52.

⁵⁴ NEPA regulations at § 1505.2.

⁵⁵ NEPA regulations at §§ 1506.9 and 1506.10(a).

OPA Regulations: Demand (§990.62)	NEPA Regulations Record of Decision (§ 1505.2)
<ul style="list-style-type: none"> ● Invitation to RP to implement or fund restoration ● Identification of incident from which claim arises ● Identification of trustee(s) asserting claim and a statement of statutory basis for trusteeship ● Brief description of the injuries for which claim is being brought ● Index to Administrative Record ● Request for reimbursement of costs, plus interest 	<ul style="list-style-type: none"> ● Statement of decision ● Identification of all alternatives that were considered to be environmentally preferable (optional for agency to discuss preferences among alternatives based upon relevant factors including economic and technical considerations and agency statutory missions) ● Identification and discussion of all such factors, including any essential considerations of national policy which were balanced by the agency in making its decision and statement of how these considerations entered into its decision ● Statement of whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not ● Description of monitoring and enforcement program that shall be adopted and summarized where applicable for any mitigation (see § 1505.3)

Exhibit 3.3 Decision documentation.